

Message Text

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ORIGIN EB-11

INFO OCT-01 ARA-16 ISO-00 L-03 CAB-09 CIAE-00 COME-00

DODE-00 DOTE-00 INR-10 NSAE-00 RSC-01 FAA-00 /051 R

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R 042252Z JUN 74

FM SECSTATE WASHDC

TO AMEMBASSY BOGOTA

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E.O. 11652: N/A

TAGS: ETRN, CO

SUBJECT: CIVAIR - BRANIFF FUEL PROBLEM

REF: STATE 106816, BOGOTA 4677

1. DEPT BELIEVES THAT APPROPRIATE FORMAL PROTEST BASED ON FACTS CONTAINED IN REFTELS SHOULD BE INITIATED AT DISCRETION OF EMBASSY. IN ITS PRESENTATION TO HOST GOVERNMENT, EMBASSY SHOULD AVOID MAKING SPECIFIC REFERENCES TO PARA (A) OF ARTICLE 7 OF THE BILATERAL. THIS PROVISION APPLIES TO USE OF AIRPORTS AND FACILITIES, THUS, DEPT BELIEVES THAT THIS SECTION MAY BE INTENDED TO COVER ONLY USER CHARGES (E.G. LANDING CHARGES, PARKING FEES, ETC.). ONLY IN FOLLOWING PARAS (B), (C) AND (D) ARE FUEL AND LUBRICATING OILS SPECIFICALLY MENTIONED. SIGNIFICANTLY PROVISIO CONTAINED IN PARA (A) THAT "CHARGES NOT BE HIGHER THAN WOULD BE PAID. . . BY ITS NATIONAL AIRCRAFT ENGAGED IN SIMILAR INTERNATIONAL SERVICES" IS NOT REPEATED IN THESE FOLLOWING PARAS.

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2. IN LIGHT OF ABOVE, DEPT SUGGESTS THAT EMBASSY FOCUS

ON THE THRUST OF AVOIDANCE OF DISCRIMINATORY PRACTICES REFLECTED IN ARTICLE 7 OF THE BILATERAL AND THE CHICAGO CONVENTION WHICH CALL FOR NON DISCRIMINATORY TREATMENT BETWEEN FOREIGN AND NATIONAL CARRIERS SERVICING THE SAME POINTS AS WELL AS THE FAIR AND EQUAL OPPORTUNITY PROVISIONS OF ARTICLE 8.

3. BRANIFF REP RECENTLY INFORMED DEPARTMENT THAT AVIANCA BENEFITED FROM PREFERENTIAL FUEL PRICE OF ABOUT 7 CENTS PER GALLON PRIOR TO MAY, WHEN THE NEW PRICE WENT INTO EFFECT RAISING DIFFERENTIAL TO 13 CENTS PER GALLON. BRANIFF REQUESTED US TO PETITION FOR RETROACTIVE COMPENSATION FROM ECOPETROL. WE MADE NO COMMITMENT BUT, ON THIS ISSUE BELIEVE BRANIFF SHOULD PURSUE LEGAL REMEDIES IN COLOMBIA WHILE OUR OFFICIAL REPRESENTATIONS ARE DIRECTED AT ELIMINATION OF PRESENT DISCRIMINATORY TREATMENT. DEPT WOULD APPRECIATE EMBASSY'S COMMENTS AND REPORT ON HOW LONG ALLEGED FUEL PRICE DISCRIMINATION HAS BEEN IN EFFECT.

4. FYI: SECT. 211.145 OF THE FEDERAL ENERGY ADMINISTRATION REGULATIONS STATES: "(B) AVIATION FUEL FOR INTERNATIONAL FLIGHTS SHALL BE ALLOCATED ON A NON DISCRIMINATORY BASIS AMONG INTERNATIONAL CARRIERS, SUBJECT TO MODIFICATION FOLLOWING CONSULTATION WITH APPROPRIATE FEDERAL AGENCIES ON A CASE-BY-CASE BASIS IF REQUIRED TO ENCOURAGE RECIPROCAL NON DISCRIMINATORY ALLOCATION OF AVIATION FUEL FOR US CARRIERS ENGAGED IN INTERNATIONAL FLIGHTS." AT THE OPPORTUNE MOMENT, POST MAY WISH TO DRAW ABOVE PROVISIONS TO ATTENTION OF LOCAL AUTHORITIES WITHOUT MAKING DIRECT THREAT OF RETALIATION AGAINST AVIANCA. END FYI. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE DISCRIMINATION, AIRLINES, JET FUEL, PRICES, AVIATION AGREEMENTS, TRADE COMPLAINTS, DIPLOMATIC PROTESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 04 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE117454
Document Source: CORE
Document Unique ID: 00
Drafter: JCOOK :GL
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740142-0761
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740675/aaaacnbd.tel
Line Count: 91
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: STATE 106816, BOGOTA 4677
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 11 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 SEP 2002 by martinml>; APPROVED <13 FEB 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR - BRANIFF FUEL PROBLEM
TAGS: ETRN, CO, BRANIFF, AVIANCA
To: BOGOTA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005